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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BYRON MASAYUKI TOKUMOTO,

Defendant and Appellant.

F056684

(Super. Ct. No. F08901315)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jon Nick Kapetan, Judge.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Charles A. French and Michael A. Canzoneri, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Gomes, J. and Dawson, J.

Pursuant to a plea agreement, appellant, Byron Tokumoto, pled guilty to elder abuse (Pen. Code, § 368, subd. (b)(1)) and admitted an enhancement allegation that in committing that offense, he personally inflicted great bodily injury that caused the victim to suffer paralysis of a permanent nature or coma-inducing brain injury. (Pen. Code, § 12022.7, subd. (b)). The court imposed a prison term of nine years, consisting of the four-year upper term on the substantive offense and five years on the accompanying enhancement.

Prior to sentencing, appellant moved to withdraw his plea (plea motion). The court denied the motion. Appellant's sole contention on appeal is that the court erred in denying his plea motion.

FACTUAL AND PROCEDURAL BACKGROUND¹

At the hearing on appellant's plea motion (the hearing), Deputy Public Defender Roberto Dulce, testified to the following. He was representing appellant on March 18, 2008. On that date, the prosecution communicated to him an offer of a plea agreement. The terms of that agreement included the following: appellant would plead guilty to the charge of elder abuse; another charge and an enhancement allegation that could have added one year eight months to the sentence would be dismissed; and appellant would receive a prison sentence of up to nine years. On March 25, 2008, Mr. Dulce met with appellant at the jail at which time he explained to appellant the prosecution's offer.

On April 2, 2008 (April 2), the day appellant entered his plea, he executed a "FELONY ADVISEMENT, WAIVER OF RIGHTS, AND PLEA FORM" (plea form). On the plea form, appellant, by initialing statements on the form, indicated that, among other things, he understood his various constitutional rights; he waived those rights; he

¹ The facts of the instant offense are not relevant to the issues raised on appeal. Therefore we will forgo recitation of those facts.

understood he could receive up to nine years in prison as a result of his plea; and he was “entering his plea freely and voluntarily, without fear or threat to [him] or anyone closely related to [him].” He indicated with his signature that he “declare[d] under PENALTY OF PERJURY, under the laws of the State of California, that [he had] read, understood and initialed each item above, and everything on the form [was] true and correct.”

At the hearing, Mr. Dulce further testified to the following. On the day appellant entered his plea, Mr. Dulce again “discuss[ed] the circumstances” of the plea and “[went] over” the plea form with appellant, “point by point.” Mr. Dulce “read the contents of the form to [appellant] and [appellant] filled it out.” Mr. Dulce was “confident” that appellant “understood his rights” and “understood what he was doing,” and that his “wishes were to enter that plea.” During the time the court was questioning appellant regarding the constitutional rights appellant was waiving, appellant did not appear to be confused.

Mr. Dulce further testified, in response to a question on cross-examination as to whether he was “aware of [appellant’s] mental capacity”: “I was aware that [appellant] had sustained injuries in connection with an accident that occurred two or three years prior[] I had communicated that to the court when we were trying to negotiate a plea bargain agreement, and that was why the court reasoned that the sentence could be less than that nine-year indicated sentence.”

On April 2, prior to entering his plea, appellant, in response to questions from the court, stated he had executed the plea form, he understood everything he read and initialed, and he had no questions for Mr. Dulce or the court. Appellant confirmed that he wished to enter a plea to the charge of elder abuse and admit the great bodily injury enhancement allegation. The court found that “[appellant] has freely and voluntarily and intelligently waived his rights, and understands the consequences of his plea.”

In his declaration in support of his motion to withdraw his plea, appellant averred as follows: Before he entered his guilty plea, Mr. Dulce “handed [appellant] a piece of

paper and told [appellant] to sign it.” Appellant “did not know what [he] was signing.” Mr. Dulce “did not explain to [appellant] what [he] was signing.” Mr. Dulce “just told [appellant] to sign so [appellant] did.” Appellant “felt as if [he] had to sign the paper right away.” “When the judge asked [appellant] if [he] understood what [he] signed [appellant] looked at [Mr. Dulce] for help and he simply told [appellant] to say yes so [appellant] did [so]. [Mr. Dulce] made no attempt, at the time, to explain what [appellant] was signing.” Appellant “[has] a mental disability which makes it hard for [him] to process information quickly.” Mr. Dulce was aware of appellant’s “condition” because appellant told him about it “many times.” Appellant relied on Mr. Dulce to “explain what was happening in a slow none stressful [*sic*] [manner],” but on the day appellant entered his plea, the attorney failed to do so. Appellant would not have signed the plea form had he known he was giving up his right to jury trial and his right to “present a defense.”

The parties stipulated at the hearing that the court could consider appellant’s declaration. Appellant presented no other evidence.

DISCUSSION

Appellant contends he did not “freely and voluntarily” enter his plea, and therefore the court erred in denying his plea motion. Specifically, appellant argues: “[T]he defense presented evidence appellant had a mental disability and was unable to understand what he was signing when he executed the plea agreement”; “[t]he prosecution presented no evidence to rebut or overcome this evidence”; and the defense evidence established “appellant was not cognizant of the consequences of his plea and the plea was not knowing and intelligent.” Appellant’s contention is without merit.

“[Penal Code] Section 1018 permits a trial court to allow a criminal defendant to withdraw his guilty plea ‘for a good cause shown.’” (*People v. Wharton* (1991) 53 Cal.3d 522, 585.) “Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea.” (*People v. Cruz* (1974) 12

Cal.3d 562, 566.) It is the defendant's burden to produce evidence of good cause by clear and convincing evidence." (*People v. Wharton, supra*, 53 Cal.3d at p. 585.) "Penal Code section 1018 ... requires liberal construction of its provisions to promote justice.

However, the promotion of justice includes a consideration of the rights of the prosecution, which is entitled not to have a guilty plea withdrawn without good cause." (*People v. Hightower* (1990) 224 Cal.App.3d 923, 928.)

"[T]he withdrawal of a plea [of guilty or no contest] ... is within the sound discretion of the trial court after due consideration of the factors necessary to bring about a just result.'" (*People v. Hightower, supra*, 224 Cal.App.3d at p. 928.) "An appellate court will not disturb the denial of a motion [to withdraw a plea] unless the abuse is clearly demonstrated.'" (*People v. Wharton, supra*, 53 Cal.3d at p. 585.) "[I]n determining the facts [with respect to a claim that a defendant did not understand his or her plea or its consequences], the trial court is not bound by uncontradicted statements of the defendant." (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.) Further, "the trial court ... is the trier of fact and hence the judge of the credibility of the witnesses or affiants. Consequently, it must resolve conflicting factual questions and draw the resulting inferences. [Citation.] As is the case with most other evidentiary rulings by a trial court, we apply the substantial evidence rule on appellate review. [Citation.] Under this rule, we 'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*People v. Quesada* (1991) 230 Cal.App.3d 525, 533; accord, *People v. Hunt, supra*, 174 Cal.App.3d at p. 104 [in plea withdrawal proceeding, "[w]here two conflicting inferences may be drawn from evidence, it is the reviewing court's duty to adopt the one supporting the challenged order"].)

Appellant's claim is supported only by statements in his declaration. Appellant's argument, in essence, is that the court was required to credit appellant's claim that as a result of a "mental disability," which made it difficult for appellant to "process

information quickly,” and Mr. Dulce’s failure to adequately explain to appellant “what was happening,” appellant did not know “what he was signing” when he signed the plea form or that by pleading guilty, and he did not know he was giving up his right to a trial by jury and his “right to present a defense.” However, as indicated above, the court was not bound by appellant’s statements. (*People v. Hunt, supra*, 174 Cal.App.3d at p. 103.)

Appellant executed the plea form in which he stated he read and understood the form and was entering his plea freely and voluntarily. Mr. Dulce testified he went over the form with appellant “point by point” and was “confident” appellant “understood his rights” and “understood what he was doing.” Appellant did not appear to be confused at the April 2 proceeding, and in open court at that proceeding, he confirmed that he had executed the plea form, stated he understood everything he read and initialed, and had no questions for Mr. Dulce or the court. From this evidence, the court reasonably could have concluded that appellant had failed to meet his burden of establishing “[m]istake, ignorance or any other factor overcoming the exercise of [his] free judgment” (*People v. Cruz, supra*, 12 Cal.3d at p. 566.) Accordingly, appellant has failed to establish the court erred in denying the plea motion.

DISPOSITION

The judgment is affirmed.